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APR 8 1997

Federal Communications Commission
Office of Secretary

April 7, 1997

0339.008

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: In re Applications of American Family Association -
Marksville, Louisiana and Educational Radio Foundation
of East Texas, Inc. - Jena, Louisiana
For Construction Permit for a New Noncommercial
Educational FM Station
MM Docket No. 97-78

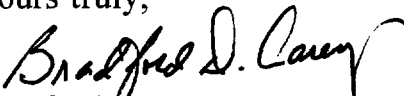
*Motion of Educational Radio Foundation
of East Texas, Inc. for Summary Decision
and Grant of Application*

Dear Mr. Caton:

Enclosed please find the original and six (6) copies of a Motion of Educational Radio Foundation of East Texas, Inc. for Summary Decision and Grant of Application for filing with the Commission in connection with the above-captioned.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,


Bradford D. Carey

BDC/mv
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION APR 8 1997
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In re Applications of)	MM Docket No. 97-78
)	
AMERICAN FAMILY ASSOCIATION)	File No. BPED-940214MA
(Hereinafter "Family"))	
Marksville, Louisiana)	
Req: 88.1 MHz, Channel 201c)	
40 kW(H);100 kW(V);366 meters)	
)	
EDUCATIONAL RADIO FOUNDATION)	File No. BPED-940804MA
OF EAST TEXAS, INC.)	
(Hereinafter "Radio"))	
Jena, Louisiana)	
Req: 88.1 MHz, Channel 201)	
15.5kW(H);70 kW(V);307 meters)	

For Construction Permit for a
New Noncommercial Educational
FM Station

MOTION OF EDUCATIONAL RADIO
FOUNDATION OF EAST TEXAS, INC.
for
SUMMARY DECISION
and
GRANT OF APPLICATION.

Educational Radio Foundation of East Texas, Inc. (the "Foundation" or "Radio") by its undersigned Counsel hereby advances its **Motion of Educational Radio Foundation of East Texas, Inc. for Summary Decision and Grant of Application** ("Motion").

In support of this Motion, the Foundation shows the following:

I. THIS MOTION IS TIMELY.

This proceeding was designated to determine which of two mutually exclusive applications for new non-commercial, educational FM radio stations should be granted. The only designated issue is the non-commercial "section 307(b)" issue. No other issues have been designated or are pending.¹ On April 3, 1997, the Undersigned Counsel received by U.S. Mail a service copy of Family's Petition to Dismiss ("Petition") its own application. This Motion is being filed expeditiously upon receipt of Family's Petition, on which this Motion is based. Thus, this Motion is timely.

II. THERE IS NO REMAINING ISSUE FOR HEARING.

The only substantive designated issue is to determine which application, if either, is preferred under Section 307(b) of the Communications Act of 1934, as Amended. Family has requested dismissal of its application. Upon dismissal of Family's application, Radio's application will be the sole remaining application. In view of the fact that Radio's qualifications are unquestioned and its application will be the sole remaining application, there will be no issue of fact to be determined. Thus, it is respectfully submitted that Radio's application should be granted by summary decision.

¹At the Prehearing Conference in this proceeding held on March 27, 1997, the Presiding Judge granted Radio's oral motion to withdraw, with leave to refile, a Motion to Enlarge the Issues.

V. RADIO'S APPLICATION SHOULD BE GRANTED.

Radio's application is the sole remaining applicant.² Radio's qualifications are unquestioned. But for the competing application of Family, Radio's application would have been granted by the Commission's Mass Media Bureau processing line. Now, Family has requested dismissal of its application. Radio respectfully submits that summary decision should be **GRANTED** in Radio's favor; it's application should be **GRANTED**; and, this proceeding be **TERMINATED**.

Respectfully Submitted,

By: _____

Ashton R. Hardy
Bradford D. Carey
J. Michael Lamers

Hardy & Carey
111 Veterans Blvd., Suite 255
Metairie, LA 70005
(504) 830-4646

April 7, 1997

²A Declaration of No Consideration executed on behalf of Radio is attached hereto. In view of the fact that Radio is the only applicant other than Family, it is respectfully submitted that Radio's Declaration alone is sufficient to establish that no consideration has been paid to Family in conjunction with the dismissal of its Application.

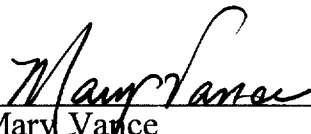
CERTIFICATE OF SERVICE

I, Mary Vance, a secretary in the law firm of Hardy & Carey, L.L.P., do hereby certify that a copy of the above and foregoing Notice of Appearance has been served on the following by mailing a copy of same via U.S. Mail, postage prepaid, this 7th day of April, 1997, addressed as follows:

*Administrative Law Judge Edward Luton
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20036

American Family Association
P. O. Drawer 2440
Tupelo, MS 38803

*Mr. James Shook
Mass Media Bureau
Federal Communications Commission
1919 M Street, Room 702
Washington, D.C. 20036



Mary Vance

*By Hand

s:\0339.008\plead\summ.mot

EXHIBIT ONE

PETITION TO DISMISS

filed by

AMERICAN FAMILY ASSOCIATION

BEFORE THE
FEDERAL COMMUNICATION COMMISSION
WASHINGTON, D.C.

In re Application of)	
AMERICAN FAMILY ASSOCIATION, INC.)	
Marksville, Louisiana)	
)	MM Docket No. 97-78
For Permission to Construct New NCE-FM Station)	File No. BPED-940214MA
Req: 88.1 MHZ, Channel 201c)	
40 kW(H); 100kW(V);366 meters)	
)	
To: The Mass Media Bureau)	

PETITION TO DISMISS

Petitioner American Family Association, Inc. ("AFA") submits the following Petition requesting that the Commission Dismiss the above-captioned Application of the Petitioner.

1. INTRODUCTION

The above-captioned Application by Petitioner AFA, for a new noncommercial educational broadcast station operating on Channel 201, in Marksville, LA has been frozen as mutually exclusive with the Application of the Educational Radio Foundation of East Texas, Inc. ("ERFET") on Channel 210, in Jena, LA.¹ A hearing for the purpose of a Section 307(b) determination on these mutually exclusive proposals is designated for August 13, 1997, before Judge Edward Luton.

2. DISCUSSION

A. AFA has proposed settlement offers.

In 1995, AFA offered to move its proposed site to the south, if ERFET would go slightly directional, giving up approximately five percent of its audience, and pay our engineering costs.

¹File No. BPED-940804 MA.

At the pre-hearing conference on March 27, 1997, AFA again offered to make this settlement which would give ERFET approximately 95 percent of the coverage for which it had applied.

B. The Parties have been unable to reach a settlement agreement.

During the negotiations in 1995, ERFET vacillated regarding the market it really wanted to serve, and never made a final response to the settlement offer made by AFA. On March 31, 1997, counsel for ERFET called and indicated that ERFET would decline the renewed offer as it was made by AFA. Due to the inability of the Parties to resolve the longstanding issue of mutual exclusivity, AFA has determined to withdraw its application, removing this clog in the backlog of Federal Communications Commission cases. Moreover, in the intervening years between the 1993 filing of the Marksville application and the present, AFA has obtained licenses providing coverage to part of the service area covered by the Marksville application.

3. CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition to Dismiss be granted.

Dated: March 31, 1997

Respectfully submitted,
American Family Association, Inc.

By: 

Patrick J. Vaughn
Asst. General Counsel
American Family Association
P.O. Drawer 2440
Tupelo, MS 38803

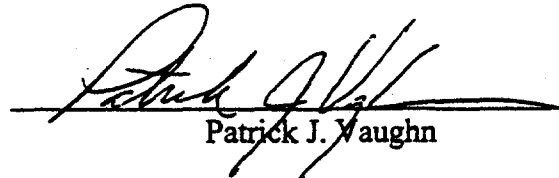
CERTIFICATE OF SERVICE

I, Patrick J. Vaughn, do hereby certify that copies of the foregoing "Petition to Dismiss" were sent by pre-paid first class mail to the following on March 31, 1997:

James Shook, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, DC 20554

Hon. Edward Luton, ALJ
Federal Communications Commission
2000 L Street, N.W.
Washington, DC 20554

Bradford D. Carey
Hardy and Carey, L.L.P.
111 Veterans Boulevard, Suite 255
Metairie, LA 70005



Patrick J. Vaughn

EXHIBIT TWO

DECLARATION OF NO CONSIDERATION

DECLARATION UNDER PENALTY OF PERJURY

I, Judge Tom Ramey Jr., hereby state and declare as follows under the pains and penalties of perjury under the laws of the United States of America:

1. I am an officer of Educational Radio Foundation of East Texas, Inc., ("Radio") holding the position indicated by my signature below.
2. Neither Radio nor any of its officers or directors or agents has paid or agreed to pay any consideration to American Family Association ("Family") in conjunction with, or exchange for, the dismissal of Family's application for a construction permit for a new station at Marksville, Louisiana.

Executed this April 4, 1997

Educational Radio Foundation of East Texas, Inc.

By: 

Title: President